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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

- - -

THE HONORABLE DAVID HITTNER, JUDGE PRESIDING

UNITED STATES OF AMERICA, No. 22-cr-120

Plaintiff,

vs.

SCOTT THOMAS PROVOST,

Defendant.

SENTENCING HEARING
OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS
Houston, Texas
July 7, 2023

APPEARANCES:

For the Plaintiff: Karen Lansden, Esq.
For the Defendant: R. Victoria Gilcrease-Garcia, Esq.
Reported by: Nichole Forrest, RDR, CRR, CRC
Official Court Reporter
U.S. District Court
Southern District of Texas

Proceedings recorded by mechanical stenography.
Transcript produced by Reporter on computer.

PROCEEDINGS

(The following proceedings held in open court.)

* * *

THE COURT: All right. The Court calls the case for sentencing, Criminal Matter 22-120, United States versus Scott Thomas Provost.

Who represents the government?

MS. LANSDEN: Karen Lansden on behalf of the government.

THE COURT: For the defendant?

MR. GILCREASE-GARCIA: Victoria Gilcrease-Garcia for Mr. Provost. Mr. Provost is feeling ill.

THE COURT: Have a seat, sir, please.

MR. GILCREASE-GARCIA: Thank you, Your Honor.

THE COURT: You can stand there, whatever your preference is. You want to -- you want to pull the microphone in --

MR. GILCREASE-GARCIA: Yes, Your Honor.

THE COURT: All right. I see no objection by the government. The defense had filed some. I

1 know the government has filed a response to that.

2 Basically, on the -- what is it, okay.

3 I'm going to read down -- you have an objection to
4 paragraphs 1, 2 and 3. That is granted as the
5 clarification. These are the defense objections.

6 The next ones you object to are number 4
7 and number 6. I guess that is paragraphs 4 and 6.
8 And that's overruled.

9 Objection to paragraph 5 -- that's what
10 the numbers are. Is that correct?

11 THE PROBATION OFFICER: Yes, Judge.
12 They're not paragraphs. They're just --

13 THE COURT: I'm going again. These are
14 the objections by 1, 2, 3 and 4; right?

15 THE PROBATION OFFICER: Correct.

16 THE COURT: Objections 1, 2, 3, those are
17 granted as clarifications.

18 Objections number 4 and number 6 are
19 overruled.

20 The objection to number 5 is granted.
21 Objection to number -- let's see.

22 The next objection is based on the
23 objections the defendant argues is total offense level
24 should be 30. That's overruled.

25 Now aside from what you have filed in

1 writing, any additions or corrections or objections to
2 the presentence report or special conditions in the
3 appendix by the government?

4 MS. LANSDEN: No, Your Honor.

5 THE COURT: By the defense?

6 MR. GILCREASE-GARCIA: No, Your Honor.

7 THE COURT: All right. Any objections not
8 granted and anything else that may be in here as far
9 as objections go are overruled. The presentence
10 report and all addendums are hereby adopted by this
11 Court.

12 Counsel, I want to go down and see what
13 the initial filings were. Ms. Gilcrease-Garcia filed
14 a sentencing memorandum and a suggestion basically
15 that you're asking for 72 months. You discuss such
16 matters as the median sentencing. That is all on page
17 1.

18 And you say -- you say guideline 2G2.2
19 sets forth ranges that are higher than necessary to
20 satisfy the statutory goals. I'm reading here from
21 defendant's sentencing memorandum.

22 You then go into on the next page,
23 non-production of child pornography.

24 You then discuss he has a history of
25 trauma and significant health needs. And you're

1 saying that he reports that he's always had problems
2 with interaction with people. Has never been in a
3 relationship.

4 Also addresses his depression. Also the
5 health issues -- the other health issues that he does
6 have. You go down and you discuss it. The next,
7 continuing on to page 6, generally the guidelines are
8 higher than necessary to achieve the goals. And, in
9 fact, I have read all of that.

10 The government does respond to the
11 defendant's memorandum. You could say -- now this is
12 the government rather. The defendant argues for a
13 variance in this case and requests a non-guideline
14 sentence.

15 You then especially on the next page --
16 the pages are not numbered --

17 MS. LANSDEN: I apologize.

18 THE COURT: I'm saying page 2 is where I
19 have it. The second page you discuss his age and the
20 request for 72 months, and that he has -- the sexual
21 interest in children cannot be controlled.

22 And you do relate to the number of videos
23 and images that he had; 6,718 videos and 313,356
24 images of child sexual assault material.

25 You also have -- attached to it, you have

1 a transcript -- you have a recording. A lot of it is
2 the excerpts to the transcript of the recordings.

3 Then you discuss the various circuits
4 about -- talking about the way the Fifth Circuit
5 reversed the District Court when the Court failed to
6 see any importance as a general deterrence. You could
7 decide that.

8 You also have that *Miller* case here in the
9 Fifth Circuit. You keep going. The next one,
10 paragraph D, "D" like in dog, unwarranted disparities
11 and unwarranted similarities. You address that.

12 You also have a response to the
13 defendant's objections, but those were already ruled
14 upon.

15 I've read all of the additional matters
16 that were submitted.

17 Now, counsel, do you desire to make a
18 statement on behalf of your client?

19 MR. GILCREASE-GARCIA: Yes, Your Honor.

20 THE COURT: Go ahead.

21 MR. GILCREASE-GARCIA: Thank you, Your
22 Honor.

23 We request a sentence of 72 months. We
24 have a number of reasons --

25 THE COURT: Go ahead.

1 MR. GILCREASE-GARCIA: Your Honor, the
2 first --

3 THE COURT: I've read them. I've gone
4 through it. You can generally summarize them, but I
5 don't want to go over all of them. I've read them.
6 I've referred to them.

7 MR. GILCREASE-GARCIA: Understood.

8 THE COURT: Go ahead.

9 MR. GILCREASE-GARCIA: I'll highlight the
10 important arguments.

11 The first argument as, Your Honor knows,
12 relates to sentencing trends in these types of cases.

13 Your Honor has overruled our objection to
14 the guideline -- to the total offense level. But even
15 considering the guideline range that Your Honor has
16 decided applies in this case today, which is 210 to
17 262 months, the U.S. Sentencing Commission has
18 surveyed sentence between 2018 and 2022 for offenders
19 convicted of this type of an offense with that
20 guideline range and the median sentence in those
21 cases -- of all those cases is 138 months. It's
22 dramatically below the guideline range that applies.

23 And so the Court, in the interest of
24 preventing unwarranted sentencing disparity, should
25 give a sentence that is below the guideline range. We

1 would argue substantially below.

2 We would also like to ask for a downward
3 variance based on Mr. Provost's history and
4 characteristics. As Your Honor has read, he's 64
5 years old. His age, based on all the statistics that
6 the U.S. Sentencing Commission has gathered, makes him
7 unlikely to reoffend in the future. His likelihood of
8 recidivism is very low.

9 That is especially the case because he's
10 being -- he was charged and has been convicted --

11 THE COURT: He's already had two
12 interactions with kids that are noted there with no
13 convictions. His criminal history was noted that he
14 had some sexual interaction of some sort --

15 MR. GILCREASE-GARCIA: That's true. There
16 is a note about that in the PSR. The government has
17 emphasized that even in those situations there was no
18 actual physical harm done to --

19 THE COURT: You're talking physical harm.
20 We know there is the theory on the other side; that
21 it's the physical harm, getting out there and
22 remaining out there through the youngster's lifespan.

23 MR. GILCREASE-GARCIA: Your Honor -- the
24 other point I would like to emphasize is that those
25 interactions --

1 THE COURT: Counsel, be seated, or you can
2 stand if you want to.

3 MS. LANSDEN: I'll stand. Thank you, Your
4 Honor.

5 MS. GILCREASE-GARCIA: There is a specific
6 incident involving a girl on a bicycle. I believe
7 that happened in 1990, a very long time ago. There
8 has been no criminal conduct in decades for
9 Mr. Provost except for this offense -- these offenses
10 of conviction, of course.

11 And so he has a low likelihood of
12 recidivism in light of his age. He has a history, a
13 general history of being law-abiding, which is
14 reflected in his criminal history category, and he
15 also had significant mental health and physical health
16 issues; suffers from diabetes. He's sick today right
17 now and just generally struggles with his health.

18 And being in prison for something like
19 Mr. Provost is more difficult, and I would argue, more
20 of a penalty than for somebody who is 20 years old and
21 in very good health. We would ask that Court to take
22 that into account.

23 And, finally I just like to emphasize
24 that, as many Courts have recognized, many Circuit
25 Courts and District Courts, that 2G2.2, which is the

1 guideline that Mr. Provost is being sentenced under,
2 gives very high sentencing ranges.

3 Many Courts have recognized those
4 sentencing ranges are disproportionately high for a
5 number of reasons. They're not based on empirical
6 research showing a connection between these offenses
7 and a propensity to commit sexually violent crimes
8 against children. There is no empirical research
9 they're based on. The guidelines don't distinguish
10 between offenders that have different culpability
11 levels.

12 Nearly every offender who is convicted of
13 this type of crime gets an enhancement for using a
14 computer for a certain number of images, because it's
15 just very easy to download large volumes of images and
16 videos, which perhaps didn't always used to be the
17 case. It is now.

18 The guidelines also don't take into
19 account the low likelihood of reoffending for
20 non-production child pornography offenders, which is
21 what we're doing with here.

22 For all of those reasons, we ask for the
23 sentence of 72 months.

24 THE COURT: Thank you.

25 Mr. Provost, you desire to make statement

1 on your own behalf?

2 THE DEFENDANT: I never had any sexual
3 contact with anyone in my entire life. Whatever
4 they're talking about, 1990, I did not have sexual
5 contact with anyone.

6 I think I was putting up posters for
7 Assemblies of God Church that were prolife in
8 nature --

9 THE COURT: Hold it one second. Pull the
10 microphone over.

11 THE DEFENDANT: I don't want to waste your
12 time.

13 THE COURT: No, sir. On the contrary,
14 that is why I want to hear what you've got to say.
15 You can look at me and just make sure you're close to
16 the mic.

17 THE DEFENDANT: I was putting up a prolife
18 poster, and a prochoice activist held up the middle
19 finger, and I said: Not now but later.

20 It was a joke.

21 THE COURT: Uh-huh.

22 All right. Thank you, sir.

23 Government, please?

24 MS. LANSDEN: The government has set forth
25 the reasoning in the pleadings that you've discussed

1 that you read diligently.

2 We do believe that whether or not the
3 guidelines are correct with the sentence of 210 months
4 between --

5 THE COURT: 260 --

6 Go on.

7 MS. LANSDEN: We would like to emphasize
8 for the Court the sheer volume of child pornography
9 that this defendant was found with. This is one of
10 the most -- that the Southern District of Texas has
11 ever dealt with. The FBI spent countless man-hours
12 having to go through each individual video and each
13 individual image to determine if the subjects in the
14 video were actual children or not.

15 They had to review over 10,000 videos of
16 which over 6,000 were determined to be child
17 pornography and over 600,000 images of which 300,000
18 images were determined. So the FBI agents had to
19 spend individual hours clicking through each single
20 image to determine that.

21 And I would just note that the defendant's
22 attitude towards these victims seemed so cavalier when
23 he was interviewed. He had no remorse that these were
24 actual children and actual victims, actual children
25 put in these horrendous situations.

1 He knew in downloading this pornography
2 from the peer-to-peer network Freenet over 60 percent
3 of the content --

4 THE COURT: Slow down.

5 MS. LANSDEN: Over 60 percent of the
6 content in his own words was something that was
7 inappropriate. He knew that any of the items on there
8 was going to be "nasty stuff." When the agent asked
9 if there were going to be infants -- intercourse with
10 infants in the images, he said, "Yes, but my
11 preference is teenagers, you know."

12 So I would like to note that this
13 defendant, while he's never had any sexual contact
14 with anyone, he did have a proclivity towards
15 children, a sexual interest that can't be deterred to
16 the fact that he downloaded over four terabytes worth
17 of images of these children.

18 So we would ask the Court to impose a
19 sentence of between 210 months or [sic] 262 months.

20 THE COURT: All right. Any reason why
21 your client should not be sentenced at this time?

22 MR. GILCREASE-GARCIA: No, Your Honor.

23 THE COURT: I've considered 18 United
24 States Code Section 3553(a). I feel a sentence within
25 the guidelines is appropriate in this case.

1 I do want to state that I considered that
2 the defendant's history and characteristics, including
3 the history of generally sexual deviant behavior, but
4 I understand there was no contact.

5 I'm just saying this because I need more
6 than a 24-month deviation between the high end of the
7 guidelines and the low end. I need to get some
8 reasons in there as to why I'm going to the area that
9 I'm going to relative to the sentence.

10 It's the judgment of the Court that the
11 defendant is hereby sentenced to the federal
12 penitentiary without parole to 240 months as to Count
13 1, and 120 months as to Count 2, 108 months to run
14 concurrently to Count 1, and 12 months to run
15 consecutively to Count 1, for a total sentence of 262
16 months in the custody of the Bureau of Prisons,
17 pursuant to guideline 5G1.2(d).

18 Now both -- let's see.

19 Upon release from imprisonment, you will
20 be placed on supervised release for a term of ten
21 years as to each of the Counts 1 and 2, both times to
22 run concurrently for a total of ten years as an added
23 measure of deterrence to protect the public from
24 future crimes of the defendant.

25 Is he a citizen of the United States?

1 MS. LANSDEN: Yes, Your Honor.

2 THE COURT: Okay. He is. All right. So
3 there is no need for a deportation matter even to
4 discuss.

5 Now I'm going to read one more paragraph.
6 Then I'm going to summarize the rest because the
7 attorneys for the government and the defendant both
8 said they had no objections to any of the appendix.

9 So this is all in the appendix and will be
10 in the final judgment. I'm going to generally go over
11 some of the conditions.

12 While on supervised release, he'll not
13 commit another federal, state, or local crime; he'll
14 comply with the standard conditions that have been
15 adopted by this Court under General Order 2017-01,
16 which was attached to the presentence investigation
17 report; abide by any mandatory conditions required by
18 law and comply with the following additional
19 conditions:

20 Not possess any controlled substance --
21 I'm summing up generally.

22 Comply with the requirements of Sex
23 Offender Registration and Notification Act.

24 Now, if he's going to participate in any
25 kind of specific treatment, it will be at his own

1 cost, if he can afford it, and it will be under the
2 general direction of the probation department.

3 He'll participate in a sex offender
4 treatment program; not use computers or other
5 electronic communications; and he's to notify anyone
6 who uses the machine that he has that it will be
7 subject to search of the contents of that computer and
8 warn other people about the use of the computer; not
9 possess any visual depiction as defined in the statute
10 18 United States Code 2256, including film,
11 photographs, video and so forth; participate in a
12 mental health treatment program; take all mental
13 health medications as prescribed; not communicate or
14 otherwise interact with the victims directly or
15 indirectly; provide probation with access to requested
16 financial information; not incur new credit charges.

17 As of the date of this recommendation, the
18 victims identified are unknown, and restitution
19 claimed in the amount of no less than \$192,817.91 had
20 been received but more is anticipated. So it's
21 subject to amendment.

22 Let's see.

23 He'll make restitution to the victims, if
24 he has the money, if it's appropriate; provide the
25 probation office access to any requested financial

1 information.

2 I find he does not have the ability to pay
3 a fine and will waive the fine in this case.

4 I find he's indigent and the JVTA and AVAA
5 assessment away.

6 It's further ordered that he'll pay to the
7 United States a special assessment of \$100 as to each
8 count for a total of \$200. That amount of money is
9 due immediately. If he can't pay it immediately, it
10 will be in -- what is it? The balance is due during
11 his incarceration. The balance due remains in
12 payments of the greater of \$25 per quarter or 50
13 percent of any wages earned while in prison in
14 accordance with the Bureau of Prison's inmate
15 financial responsibility program, and any balance
16 remaining after that shall be paid in monthly
17 installments of \$300 per month to commence 60 days
18 after his release from the imprisonment to the term of
19 supervision. The payments are to be made to the
20 United States District Clerk office Southern District
21 of Texas.

22 Is there any matter of forfeiture?

23 MS. LANSDEN: Yes. He signed a
24 preliminary order of forfeiture at re-arraignment.
25 I've submitted a final order.

1 THE COURT: Any objection?

2 MR. GILCREASE-GARCIA: No.

3 THE COURT: Do you have the order here?

4 MS. LANSDEN: I'll submit a copy.

5 THE COURT: Is it online?

6 MS. LANSDEN: Yes.

7 THE COURT: As soon as we get it, I'll
8 sign it.

9 The defendant is hereby notified that he
10 has a right to appeal any sentence that a Court
11 imposes and the right to the appointment of counsel on
12 appeal if he can't afford one.

13 Anything further from the government?

14 MS. LANSDEN: No.

15 THE COURT: Anything from the defense?

16 MR. GILCREASE-GARCIA: Could the Court
17 clarify the specific time that it articulated?

18 THE COURT: Say again.

19 MR. GILCREASE-GARCIA: Could the Court
20 articulate --

21 THE COURT: 262 months.

22 MR. GILCREASE-GARCIA: That's 240 for
23 Count 1 --

24 THE COURT: Well, probation --

25 THE PROBATION OFFICER: I had a separate

1 question --

2 THE COURT: Say that again.

3 MR. GILCREASE-GARCIA: What I heard --

4 THE COURT: You want me to read it?

5 You tell me.

6 MR. GILCREASE-GARCIA: I have 240 months

7 for Count 1; 120 for Count 2, but only 12 to run

8 consecutive, which would be 252 instead of 262 --

9 THE COURT: Probation is checking it at
10 the same time.

11 THE PROBATION OFFICER: That's correct.
12 The math is off. It would need to be -- 22 months
13 would need to be consecutive --

14 THE COURT: Let's go over it again.

15 Thank you, counsel.

16 Let's see.

17 Again, the first one is 240 months as to
18 Count 1. Is that correct, probation?

19 THE PROBATION OFFICER: Yes, Your Honor.

20 THE COURT: Okay. 120 as to Count 2.

21 THE PROBATION OFFICER: Correct.

22 THE COURT: 108 months to run concurrently
23 to Count 1.

24 MS. LANSDEN: I think that needs to be 98.

25 THE PROBATION OFFICER: Yes. 98 should be

1 concurrent.

2 THE COURT: 98 months to run concurrently
3 to Count 1 and 12 months to run consecutively --

4 THE PROBATION OFFICER: 22.

5 THE COURT: And 22 months to run
6 consecutively to Count 1.

7 THE PROBATION OFFICER: Yes.

8 THE COURT: The total sentence still
9 remains 262 months.

10 THE PROBATION OFFICER: Correct.

11 THE COURT: All right. Thank you to the
12 defense counsel to bringing it to my attention.

13 That is now the order of the Court.

14 THE PROBATION OFFICER: Thank you, Your
15 Honor. I did have one more question.

16 THE COURT: Sure.

17 THE PROBATION OFFICER: I have one more
18 question.

19 The restitution, I just wanted to know,
20 the payment to the victim was not outlined in the
21 recommendation. So I apologize for that. But it is
22 on paragraph 32 of the PSR.

23 THE COURT: Hang on. Let me get it.

24 Paragraph 32.

25 THE PROBATION OFFICER: Yes. Page 14,

1 starting at attachment number 2.

2 THE COURT: Yeah. I see it.

3 All right.

4 THE PROBATION OFFICER: I wanted to make
5 sure that we were ordering it for the series in the
6 minimum amount listed for each.

7 THE COURT: Say that again.

8 THE PROBATION OFFICER: Are we ordering it
9 for each series? For example, April Blonde series
10 listed in attachment 2 in the amount \$3,000?
11 Attachment 3 is the Pink Heart series --

12 THE COURT: Again, what is the wording
13 that you suggest that I make to clear up, you know,
14 that matter?

15 THE PROBATION OFFICER: I don't know if
16 the parties agreed to this amount. We were just
17 listing that that is the restitution that has been
18 requested. I don't know if that's what has been
19 agreed to and what the Court is ordering be paid.

20 THE COURT: What the status, counsel?

21 MS. LANSDEN: There is no discussion as to
22 agreement. If Your Honor would like, we have up to 90
23 days after judgment to make restitution final.

24 THE COURT: Let's do that then.

25 THE PROBATION OFFICER: We'll order no

1 restitution at this point, but we'll set 90 --

2 THE COURT: No restitution is ordered at
3 this point. And the parties are to work together. If
4 they can't work together, then, if you would, submit
5 that as an addendum to the final judgment when it's
6 decided. If it's not decided, let me know what input
7 you need from the Court.

8 THE PROBATION OFFICER: We'll set
9 deferment from 90 days from --

10 THE COURT: Correct.

11 THE PROBATION OFFICER: Once they request
12 it, if you sign the order, we'll amend it with new
13 figures.

14 THE COURT: Right.

15 Anything further from the government?

16 MS. LANSDEN: No.

17 THE COURT: Anything further from the
18 defense?

19 MR. GILCREASE-GARCIA: No.

20 THE COURT: Thank you. All right. We
21 stand adjourned.

22

23

24 (Court adjourned.)

25

C E R T I F I C A T E

I hereby certify that pursuant to Title 28, Section 753 United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings in the above matter.

Certified on August 21, 2023.

/s/ Nichole Forrest
Nichole Forrest, RDR, CRR, CRC

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